

RECORDED AT REQUEST OF  
*City of Richmond*

COVENANT OF DEED RESTRICTION

DEC 13 1991

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AT 4 O'CLOCK P M  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER

FEE \$

*off*

BOOK 1708 PAGE 828

Recording Requested By:

Richmond Redevelopment Agency

When Recorded, Mail To:

Howard K. Hatayama, Regional Administrator  
California Environmental Protection Agency  
Department of Toxic Substances Control  
Region 2,  
700 Heinz Avenue, Suite #300  
Berkeley CA 94710  
Attn: Site Mitigation Branch

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY

✓ Marina Bay Project  
Launch Ramp Parking Area  
Richmond, California

This Covenant and Agreement ("Covenant") is made as of the  
27<sup>th</sup> day of November, 1991 by the Richmond Redevelopment  
Agency ("Covenantor"), a public body corporate and politic,  
which is the Owner of record of certain property situated in the  
City of Richmond, County of Contra Costa, State of California,  
as described in Exhibit A attached hereto and incorporated  
herein by this reference, and as shown on Exhibit B attached  
hereto and incorporated herein by this reference ("the  
Property") and by the California Department of Toxic Substances  
Control ("the Department") with reference to the following  
facts:

- A. The Property contains hazardous substances.
- B. Description of Facts.
  - B.1. Contamination of the Property. The Property is the

1 repository of approximately 1,500 cubic yards of soils  
2 contaminated by lead. The contaminated soils have been covered  
3 with two inches to six inches of clean fill compacted to 90%  
4 Standard Proctor, seven inches of gravel road base, and two  
5 inches of asphalt (hereinafter collectively referred to as the  
6 "Cap").

7       B.2.     Exposure Pathways. The contaminant addressed in  
8 this Covenant has been buried on the Property. Without  
9 mitigation measures, exposures can take place via in-place  
10 contact, surface-water runoff, and wind dispersal, resulting in  
11 dermal contact, inhalation, or ingestion by humans. The risk of  
12 public exposure to the contaminants has been substantially  
13 lessened by placing an asphalt cap over the buried soils. The  
14 purpose of the mitigation measures which have been used at the  
15 Property is to eliminate any significant risks to human health  
16 or the environment. If exposure pathways are not mitigated,  
17 potential human health effects resulting from exposure to lead  
18 include birth defects and fetotoxicity; Central Nervous System  
19 (CNS) damage including convulsions and permanent brain damage;  
20 kidney damage; lead line in gums; blood dysplasia and anemia;  
21 and gastro-intestinal disorders.

22       B.3.     Adjacent Land Uses and Population Potentially  
23 Affected. The Property covered by this Covenant is referred  
24 to as the Launch Ramp Parking Area, and is located on the  
25 northeast corner of Hall Avenue and Marina Way South in the  
26 Marina Bay Development on the Richmond Inner Harbor, Richmond,  
27 California, and is more specifically described in Exhibit A

1 attached hereto. The Property is to be used as a vehicle and  
2 trailer parking facility, and is adjacent to the present boat  
3 launch area of the Marina Bay Project.

4 The Marina Bay Development will include a permanent  
5 population of approximately 5,000 persons residing in private  
6 residences, condominium units, and apartments. The Marina Bay  
7 Development also includes a yacht harbor, park, playground and  
8 other recreational facilities which are open to the public.  
9 Businesses located within a two block radius of the Property  
10 include a restaurant, a grocery store and commercial  
11 developments for office and retail use.

12 C. Covenantor has made full and voluntary disclosure  
13 to the Department of the presence of hazardous substances on the  
14 Property, and Covenantor has conducted extensive sampling of the  
15 Property.

16 D. Covenantor desires and intends that in order to  
17 protect the present and future public health and safety, the  
18 Property shall be used in such a manner as to avoid potential  
19 harm to persons or property which may result from hazardous  
20 substances which have been deposited on portions of the  
21 Property.

## 22 ARTICLE I

### 23 GENERAL PROVISIONS

24 1.01 Provisions to Run with the Land. This Covenant  
25 sets forth protective provisions, covenants, conditions and  
26 restrictions (collectively referred to as "Restrictions") upon  
27 and subject to which the Property and every portion thereof

1 shall be improved, held, used, occupied, leased, sold,  
2 hypothecated, encumbered, and/or conveyed. Each and all of the  
3 Restrictions shall run with the land, and pass with each and  
4 every portion of the Property, and shall apply to, inure to the  
5 benefit of, and bind the respective successors in interest  
6 thereof. Each and all of the Restrictions are imposed upon the  
7 entire Property unless expressly stated as applicable to a  
8 specific portion of the Property. Each and all of the  
9 Restrictions are imposed pursuant to Health and Safety Code  
10 Section 25355.5 and run with the land pursuant to Health and  
11 Safety Code Section 25355.5. Each and all of the Restrictions  
12 are for the benefit of and enforceable by the Department.

13       1.02     Concurrence of Owners Presumed. All purchasers,  
14 lessees, or possessors of any portion of the Property shall be  
15 deemed by their purchase, leasing, or possession of such  
16 Property, to be in accord with the foregoing and to agree for  
17 and among themselves, their heirs, successors, and assignees,  
18 and the agents, employees, and lessees of such owners, heirs,  
19 successors, and assignees, that the Restrictions as herein  
20 established must be adhered to for the benefit of future owners  
21 and occupants and that their interest in the Property shall be  
22 subject to the Restrictions contained herein.

23       1.03     Incorporation into Deeds and Leases. Covenantor  
24 desires and covenants that the Restrictions set out herein shall  
25 be incorporated in and attached to each and all deeds and leases  
26 of any portion of the Property.

27

## ARTICLE II

## DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

## ARTICLE III

## DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as described in said Exhibit A as follows:

a. Development of the Property shall be restricted to commercial or office space;

b. No residence for human habitation shall be permitted on the Property;

c. No hospitals shall be permitted on the Property;

1 d. No schools for persons under 21 years of age shall  
2 be permitted on the Property;

3 e. No day care centers for children or day care  
4 centers for Senior Citizens shall be permitted on the Property;

5 f. Any proposed alteration of the Cap shall require  
6 written approval by the Department and the Richmond  
7 Redevelopment Agency.

8 g. The Property shall be posted with a bilingual sign  
9 in English and Spanish stating that no grading, excavation, or  
10 building activities can occur on the Property without written  
11 permission of the Department and the Richmond Redevelopment  
12 Agency;

13 h. Any contaminated soils brought to the surface by  
14 grading, excavation, trenching, or backfilling shall be managed  
15 in accordance with all applicable provisions of state and  
16 federal law;

17 i. All uses and development of the property shall  
18 preserve the integrity of the Cap and of the groundwater  
19 monitoring system installed on the Property pursuant to the  
20 requirements of the San Francisco Bay Regional Water Quality  
21 Control Board (RWQCB).

22 j. The Owner shall notify the Department and the RWQCB  
23 of each of the following: 1) The type, cause, location and date  
24 of any disturbance to the Cap which could affect the ability of  
25 the Cap to contain subsurface hazardous substances on the  
26 Property and 2) The type and date of repair of such disturbance.  
27 Notification to the Department shall be made by registered mail

1 within ten (10) working days of both the discovery of cap  
2 disturbance and the completion of repairs;

3 k. The Covenantor agrees that the Department or the  
4 RWQCB shall have access to the Property for the purposes of  
5 inspection, surveillance, or monitoring, as provided for in  
6 Chapters 6.5 and 6.8 of Division 20 of the Health and Safety  
7 Code and Chapter 4 of Division 7 of the Water Code.

8 3.02 Conveyance of Property. The Owner or Owners shall  
9 provide a thirty (30) days advance notice to the Department of  
10 any sale, lease, or other conveyance of the Property or an  
11 interest in the Property to a third person. The Department  
12 shall not, by reason of the Covenant, have authority to approve,  
13 disapprove, or otherwise affect any sale, lease, or other  
14 conveyance of the Property except as otherwise provided by law  
15 or by reason of this Covenant.

16 3.03 Enforcement. Failure of the Owner to comply with  
17 any of the restrictions, as set forth in paragraph 3.01 shall be  
18 grounds for the Department, by reason of this Covenant, to have  
19 the authority to require that the Owner modify or remove any  
20 Improvements constructed in violation of that paragraph.  
21 Violation of the Covenant shall be grounds for the Department to  
22 file civil and criminal actions against the Owner as provided by  
23 law.

24 3.04 Notice in Agreements. All Owners and Occupants  
25 shall execute a written instrument which shall accompany all  
26 purchase, lease, sublease, or rental agreements relating to the  
27 Property. The instrument shall contain the following statement:

1 "The land described herein contains hazardous substances.  
2 Such condition renders the land and the owner, lessee, or  
3 other possessor of the land subject to requirements,  
4 restrictions, provisions and liabilities contained in  
5 Chapter 6.5 and Chapter 6.8 of Division 20 of the Health  
6 and Safety Code. This statement is not a declaration that  
7 a hazard exists."  
8

9  
10 ARTICLE IV

11 VARIANCE AND TERMINATION

12 4.01 Variance. Any Owner or, with the Owner's consent,  
13 any Occupant of the Property or any portion thereof may apply to  
14 the Department for a written variance from the provisions of  
15 this Covenant. Such application shall be made in accordance  
16 with Health and Safety Code Section 25233.

17 4.02 Termination. Any Owner or, with the Owner's  
18 consent, any Occupant of the Property or a portion thereof may  
19 apply to the Department for a termination of the Restrictions as  
20 they apply to all or any portion of the Property. Such  
21 application shall be made in accordance with Health and Safety  
22 Code Section 25234.

23 4.03 Term. Unless terminated in accordance with  
24 paragraph 4.02 above, by law or otherwise, this Covenant shall  
25 continue in effect in perpetuity.  
26  
27



## ARTICLE V

## MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"  
Richmond Redevelopment Agency  
Attn: Administrator  
2600 Barrett Avenue  
Richmond, CA 94804

Copy to: California Environmental Protection Agency  
Department of Toxic Substances Control  
Attention: Marina Bay Development Project  
700 Heinz Street, Suite 200  
Berkeley, CA 94710

Copy to: San Francisco Bay  
Regional Water Quality Control Board  
Attention: Marina Bay Development Project  
2101 Webster Street  
Oakland, CA 94610

Copy to: City of Richmond  
Attention: City Attorney  
2600 Barrett Avenue  
Richmond, CA 94804

1        5.03 Partial Invalidity. If any portion of the Restrictions  
2 or terms set forth herein is determined to be invalid for any  
3 reason, the remaining portion shall remain in full force and  
4 effect as if such portion had not been included herein.

5        5.04 Article Headings. Headings at the beginning of each  
6 numbered article of this Covenant are solely for the convenience  
7 of the parties and are not a part of the Covenant.

8        5.05 Recordation. This instrument shall be executed by the  
9 Covenantor and by the Regional Administrator of the Region 2,  
10 Department of Toxic Substances Control of the California  
11 Environmental Protection Agency. This instrument shall be  
12 recorded by the Covenantor in the County of Contra Costa within  
13 ten (10) days of the date of execution.

14        5.06 References. All references to Code sections include  
15 successor provisions.

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1 IN WITNESS WHEREOF, the parties execute this Covenant as of the  
2 date set forth above.

3 Owner: Richmond Redevelopment Agency  
4 A Public Body Corporate and Politic

5 By: David S. Thompson  
6 Title: Acting Administrator  
7 Administrator

8 EULA M. BARNES, Clerk  
9 Attest: By: Diane Holmes, Deputy  
10 Title: Diane Holmes, Deputy  
11 Clerk

12 Date: November 27, 1991

14 Agency: / State of California,  
15 Environmental Protection Agency  
16 Department of Toxic Substances Control

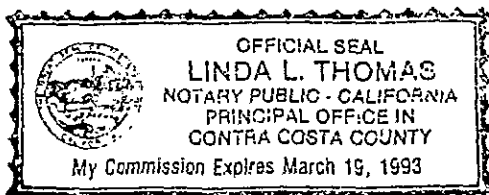
17 By: Howard K. Hatayama  
18 Howard K. Hatayama

19 Title: Regional Administrator, Region 2

20 Date: Dec 2, 1991

1 STATE OF CALIFORNIA )  
2 COUNTY OF CONTRA COSTA )

3  
4 On this 27th day of November, 1991, before me, LINDA L.  
5 THOMAS, a Notary Public in and for the State of California,  
6 personally appeared DAVID S. THOMPSON and DIANE HOLMES,  
7 personally known to me to be the persons who executed this  
8 instrument as Acting Administrator and Deputy Clerk,  
9 respectively, of the Richmond Redevelopment Agency and acknow-  
10 ledged to me that the Richmond Redevelopment Agency executed it.



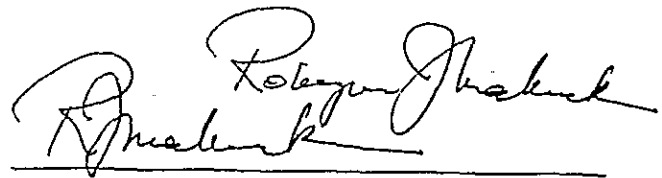
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*Linda L. Thomas*  
LINDA L. THOMAS  
Notary Public in and for the  
County of Contra Costa  
State of California

1 STATE OF CALIFORNIA )  
 2                   MARIN )  
 3 COUNTY OF ALAMEDA )

4       On December 2, 1991 before me, the undersigned, a  
 5 Notary Public in and for said state, personally appeared  
 6 Howard K. Hatayama, personally known to me or proved to me on  
 7 the basis of satisfactory evidence to be the person who executed  
 8 the within instrument as Regional Administrator of the Region 2,  
 9 Department of Toxic Substances Control of the California  
 10 Environmental Protection Agency, the Agency that executed the  
 11 within instrument, and acknowledged to me that such agency  
 12 executed the same.

13  
 14       WITNESS my hand and official seal.

15  
 16   
 17

18       Notary Public in and for said  
 19 County and State

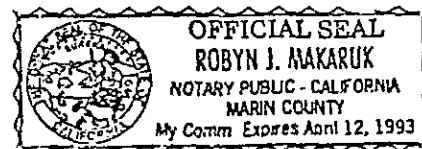


EXHIBIT A

BOOK 17081 PAGE 841

A parcel of land in the City of Richmond, County of Contra Costa, State of California, described as follows:

A portion of Lots 17 and 18, Section 24, Township 1 North, Range 5 West, Mount Diablo Base and Meridian as shown on "Map No. 1 of Salt Marsh and Tidelands" approved July 6, 1872, and filed June 11, 1917, in Map Rack 9 in the County Recorder's Office, Contra Costa County, more particularly described as follows:

Commencing at the southeast corner of the parcel of land described in the deed from Ford Motor Company to the City of Richmond, filed April 4, 1930, in Book 209 of Official Records at page 490 in the Office of the Recorder of Contra Costa County, California, said parcel known as Hall Avenue, said southeast corner being on the eastern line of said Lot 18, Section 24; thence

Along said eastern line of said Lot 18, Section 24, North  $01^{\circ}08'16''$  East to the Point of Beginning, said Point also being on the northern line of said Hall Avenue; thence

Along said northern line of said Hall Avenue North  $88^{\circ}53'41''$  West 103.37 feet; thence

Along a line parallel to and distant at right angle 9.00 feet easterly from the eastern line of Marina Way South (formerly South 14th Street) North  $01^{\circ}08'16''$  East 389.00 feet; thence

South  $88^{\circ}51'44''$  East 119.00 feet; thence

South  $01^{\circ}08'16''$  West 389.00 feet; thence

Along the eastern extension of the said northern line of said Hall Avenue North  $88^{\circ}53'41''$  West 15.63 feet to the Point of Beginning.

Containing an area of 1.06 acres, more or less.

Reference: Marina Bay Westshore - Harbormaster's Lot Expansion  
Location of Area BB Soil

A-N WEST, INC.  
11-1-90

